



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** LNM Corporation

**File:** B-244605

**Date:** July 10, 1991

Larry N. McKenney for the protester.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

General Accounting Office will not review an agency's actions  
under the Section 8(a) program absent a showing that agency  
officials have violated regulations or engaged in fraud or bad  
faith.

### DECISION

LNM Corporation protests the terms of invitation for bid (IFB)  
No. 62477-91-B-2598, issued by the Department of the Navy for  
grounds maintenance at the Naval Surface Warfare Center,  
Dahlgren, Virginia. LNM objects to the Small Business Admin-  
istration's (SBA) decision not to award a contract for this  
requirement under Section 8(a) of the Small Business Act,  
15 U.S.C. § 637(a) (1987).

We dismiss the protest.

On February 8, 1991, the Navy issued IFB No. N62477-91-B-2504  
as a small business set-aside for ground maintenance services,  
with an amended bid opening date of March 21. Prior to bid  
opening, the Navy, on March 20, canceled the solicitation in  
its entirety in order to satisfy the requirement through a  
Section 8(a) award to LNM. Section 8(a) of the Small Business  
Act authorizes the SBA to enter into contracts with govern-  
ment agencies and to arrange for the performance of such  
contracts by letting subcontracts to socially and economically  
disadvantaged small business concerns.

The SBA declined to accept the solicitation for the 8(a)  
program because it believed it was unfair to cancel the  
solicitation because a significant number of small businesses


had spent time and money preparing and submitting bids.<sup>1/</sup> The Navy then issued IFB No. N62477-91-B-2598 as an SBA set-aside. On June 7, LNM filed an agency-level protest with the contracting officer asking that bid opening be postponed indefinitely, or until the SBA either rescinded or affirmed its decision. LNM argued that the SBA officer had based his initial decision on the erroneous fact that the IFB had been canceled after bid opening when actually it was canceled prior to bid opening. On June 25, LNM was notified that a Section 8(a) award would not be made and LNM in turn filed a protest with our Office on June 26, before the bid opening which was scheduled for that same date.

LNM contends in its protest that the Navy acted in bad faith and violated applicable federal laws and regulations in failing to award a contract pursuant to the Section 8(a) program.

Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulation, our review of actions under the Section 8(a) program generally is limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. See 4 C.F.R. § 21.3(m)(4) (1991); Lecher Constr. Co.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127. The protester has not shown the reasonable likelihood of either a violation of regulations or fraud or bad faith by government officials.

Considering the SBA's broad discretion under the 8(a) program, the SBA's decision that it was unfair at that particular stage of the procurement to change the procurement from a small business set-aside to an 8(a) award is not objectionable. The fact that the decision may have been based on a misunderstanding of the facts does not constitute bad faith or fraud.

We dismiss LNM's protest.



Michael R. Golden  
Assistant General Counsel

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<sup>1/</sup> The IFB was actually canceled 1 day prior to the bid opening date.